



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
445 TWELFTH STREET, S.W.
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AUTHORIZATIONS GRANTED

APPLICATIONS FOR CONSENT TO TRANSFER CONTROL OF WITEL COMMUNICATIONS, LLC AND VYVX, LLC FROM LEUCADIA NATIONAL CORPORATION TO LEVEL 3 COMMUNICATIONS, LLC

IB Docket No. 05-318

By the Chief, International Bureau:

On November 2, 2005, Leucadia National Corporation ("Leucadia"), WilTel Communications, LLC ("WilTel"), Vyvx, LLC ("Vyx"), and Level 3 Communications, LLC ("Level 3") (collectively, "the Applicants") filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended, and section 2 of the Cable Landing License Act.¹ The Applicants seek Commission approval of the transfer of control to Level 3 of licenses and authorizations held by WilTel, a wholly-owned indirect subsidiary of Leucadia, and by Vyvx, a subsidiary of WilTel. This transfer of control will result from a proposed acquisition whereby Level 3 will acquire all of the outstanding shares of WilTel's immediate parent company, WilTel Communications Group, LLC ("WCG"). The licenses and authorizations for which the Applicants seek consent to transfer control consist of international section 214 authorizations held by WilTel and Vyvx, a joint interest held by WilTel in the submarine cable landing license for the China-U.S. Cable Network, and satellite earth station licenses held by Vyvx. WilTel has also filed an application to modify the cable landing license for the Japan-U.S. Cable Network to remove WilTel as a joint licensee.²

Upon consideration of the record, the International Bureau finds that grant of the Applications will serve the public interest, convenience and necessity.³ As a preliminary matter, there is no evidence in the record to suggest that Level 3 lacks the basic qualifications to control

¹ 47 U.S.C. §§ 34-39, 214, 310(d). On November 14, 2005, the Commission placed the Applications on public notice as acceptable for filing. *Applications For Consent To Transfer Control Of WilTel Communications, LLC And Vyvx, LLC From Leucadia National Corporation To Level 3 Communications, LLC*, IB Docket No. 05-318, Public Notice, DA 05-2963 (Int'l Bur. rel. Nov. 14, 2005).

² A list of the applications filed in this proceeding is set forth in Appendix A of this Public Notice. Grant of these applications is without prejudice to Commission action on other related applications.

³ 47 U.S.C. §§ 34-39, 214(a), 310(d).

the earth station licenses held by Vyvx.⁴ Further, the record contains no evidence that the proposed transfer of control would harm competition in the relevant U.S. telecommunications markets.

WilTel and its subsidiary Vyvx are both Delaware limited-liability companies headquartered in Tulsa, Oklahoma. The Applicants state that WilTel is a leading provider of customized communications services, including voice, data and IP-based services, for enterprise and carrier customers. WilTel operates or manages a fiber-optic network connecting 118 cities in the United States and extending internationally to Europe, Mexico, and the Pacific Rim. WilTel holds authority to provide intrastate, interexchange telecommunications services in all 50 states and competitive local exchange telecommunications services in fewer than five states. Vyvx provides interstate, interexchange and international media transmission services. Level 3 is a Delaware limited-liability company headquartered in Broomfield, Colorado and engages in the provision of domestic and international communications and information services. Level 3 is an indirect, wholly-owned subsidiary of Level 3 Communications, Inc., a Delaware corporation also headquartered in Broomfield, Colorado. It is a global communications and information services company that offers a wide range of communications services over its 23,000 mile broadband fiber optic network. Level 3 Communications, Inc. is a publicly traded company listed on the NASDAQ.

Under the terms of the October 30, 2005, Stock Purchase Agreement entered into between Leucadia and its affiliates and Level 3 and its affiliates, Level 3 will acquire all of the outstanding shares of WilTel's immediate parent, WCG, and control of WilTel and Vyvx. WilTel and Vyvx will continue to operate their facilities and provide service to their existing customers.

XO Communications, Inc. ("XO") filed comments on the applications requesting that the Commission place special conditions on the grant of the applications.⁵ XO states that in order to address the ability and incentive of Level 3 to foreclose competition and disrupt Internet communications after the merger, the Commission should require Level 3 to comply with the Commission's *Internet Policy Statement*⁶ and "to make public its peering policies and to maintain or re-engage in previous settlement-free peering with as many backbone providers as it has to date."⁷ Level 3 responds that XO is trying to inject a private contractual dispute between

⁴ See 47 U.S.C. § 308(b).

⁵ Comments of XO Communications, Inc. (filed Dec. 14, 2005). XO did not file comments on either the applications for transfer of control of the domestic section 214 authorizations or the wireless (Parts 90 and 101) licenses. See *Notice of Streamlined Domestic 214 Application Granted*, WC Docket No. 05-313, Public Notice, DA 05-3173 (rel. Dec 12, 2005) (granting transfer of control of domestic 214 authorization); *Wireless Telecommunications Bureau Assignment of License Authorization Applications, Transfer of Control of Licensee Applications, De Facto Transfer Lease Applications and Spectrum Manager Lease Notifications Action*, Public Notice, Report No. 2332 at 32 (WTB rel. Dec. 7, 2005) (granting transfer of control of wireless licenses).

⁶ See *Appropriate Framework for Broadband Access to Internet over Wireline Facilities*, CC Docket No. 02-33, et al. Policy Statement, 20 FCC Rcd 14986 (2005) (*Internet Policy Statement*).

⁷ XO comments at 10.

XO and Level 3 into the proceeding.⁸ Level 3 also states that XO fails to allege that any anticompetitive effects would result from the merger and that there are many other service providers in the market, and therefore there is no basis for conditioning the grant of the applications.⁹

Upon review of the record in this proceeding, we conclude that the comments of XO do not merit placement of conditions on the grant of the applications. First, we note that it is longstanding Commission policy not to involve itself in private contractual disputes.¹⁰ Second, we do not find that XO has shown that grant of the applications will provide Level 3 with the ability or incentive to act in an anti-competitive manner. We therefore grant the applications without special conditions.¹¹

The transaction shall be completed within 60 days from the date of authorization.¹² Within 30 days of consummation, the Commission shall be notified by letter of the date of consummation and the file numbers of the applications involved in the transaction.¹³ Failure to comply with all relevant Commission rules and policies will result in automatic rescission of the Commission's approval, dismissal of the underlying application, and could subject the applications to enforcement action, including but not limited to the imposition of forfeitures.

Pursuant to section 1.103 of the Commission's rules, the grant is effective upon release of this Public Notice.¹⁴ Petitions for reconsideration under section 1.106 or applications for review under section 1.115 of the Commission's rules may be filed within 30 days of this Public Notice.¹⁵

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⁸ Reply comments of Level 3 Communications, Inc. (filed Dec. 15, 2005) at 2-3.

⁹ *Id.* at 4-5.

¹⁰ See, e.g., *Actions Taken Under the Cable Landing License Act*, Public Notice, 20 FCC Rcd. 8557, 8560 n.12 (2005) (rejecting efforts to interject a contractual dispute into the Commission's review of Tyco International Ltd.'s sale of the Tyco Global Network to Videsh Sanchar Nigam Ltd.); *Applications of Verestar, Inc. (Debtor-in-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum, Opinion, Order and Authorization, 19 FCC Rcd. 22,750, 22,756 ¶ 16 (Int'l Bur. & Wireless Tele. Bur. 2004)

¹¹ The grant of the submarine cable landing license transfer of control application, SCL-T/C-20051102-00028, is subject to the conditions included in the initial grant of the submarine cable landing license. See *AT&T Corp. et al, China-U.S. Cable Landing License*, File No. SCL-LIC-19980309-00005, 13 FCC Rcd 16232 (Int'l Bur. 1998). Licensees shall also comply with the requirements of section 1.768 (notifications and prior approval for submarine cable landing licensees that are or propose to become affiliated with a foreign carrier), 47 C.F.R. § 1.768.

¹² 47 C.F.R. § 25.119(f).

¹³ *Id.*; see also 47 C.F.R. § 1.948(d).

¹⁴ 47 C.F.R. § 1.103.

¹⁵ 47 C.F.R. §§ 1.106, 1.115.

APPENDIX A

INTERNATIONAL SECTION 214 AUTHORIZATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
ITC-T/C-20051102-00460	WilTel Communications, LLC	ITC-214-19970115-00025
ITC-T/C-20051102-00461	Vyvx, LLC	ITC-214-20050907-00365

CABLE LANDING LICENSE APPLICATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Number</u>
SCL-T/C-20051102-00028	WilTel Communications, LLC	SCL-LIC-19980309-00005
SCL-MOD-20051020-00029	WilTel Communications, LLC	SCL-LIC-19981117-00025

SECTION 310(d) APPLICATIONS

Part 25 – Satellite Earth Station Authorization Applications

<u>File No.</u>	<u>Licensee</u>	<u>Lead Call Sign</u>
SES-T/C-20051102-01503	Vyvx, LLC	E000358
SES-T/C-20051102-01504	Vyvx, LLC	E865124
SES-T/C-20051102-01505	Vyvx, LLC	E873954
SES-T/C-20051102-01506	Vyvx, LLC	E000352